

THE STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY

SUPERIOR COURT

State of New Hampshire

v.

Christopher Callahan  
Steven C. Harris  
Paul Manley

Docket Nos.: 04-S-129-F, 04-S-286-I  
04-S-155-F  
04-S-162-F, 04-S-233-I

**ORDER ON MOTION TO CONSOLIDATE FOR TRIAL**

Defendants Christopher Callahan, Stephen C. Harris, and Paul Manley (“the defendants”) were each indicted for the crime of riot in February 2004. Callahan and Manley were also charged with purposefully and unlawfully destroying government documents. The State moves to consolidate the defendants’ cases for trial, arguing that consolidating the cases would promote judicial economy because the defendants’ charges all arose from similar conduct and events. The defendants object to consolidation, arguing the evidence presented at a consolidated trial would not necessarily be relevant to each individual defendant. The court held a hearing on this matter on September 1, 2004. After reviewing the parties’ arguments and the applicable law, the court finds and rules as follows.

The aforementioned charges arose from a disturbance that occurred in the Town of Durham on October 16, 2003. Following the conclusion of a Red Sox play-off game, a number of people gathered in the streets of downtown Durham, coming into the streets from residences, dorms, and business facilities. During the course of this incident, a number of individuals allegedly participated in aggressive and destructive behavior, some Durham properties were damaged, and a police officer was injured.

As a result of this episode, the State charged all three defendants under Part I of the riot statute, which provides as follows:

A person is guilty of riot if:

- a. Simultaneously with 2 or more other persons, he engages in tumultuous or violent conduct and thereby purposely or recklessly creates a substantial risk of causing public alarm; . . .  
.[].

RSA 644:1, I (2004). The State enhanced the charges of all three defendants from misdemeanors to a class B felonies under part IV of the riot statute, which reads:

“Riot is a class B felony if, in the course of and as a result of the conduct, any person suffers physical injury, or substantial property damage or arson occurs, or the defendant was armed with a deadly weapon, . . . []. Otherwise, it is a misdemeanor.”

On February 19, 2004, defendant Callahan was indicted under the riot statute. His indictment reads:

[The defendant] [d]id, simultaneously with 2 or more other persons, engage in tumultuous or violent conduct and thereby recklessly created a substantial risk of public alarm in that [the defendant], while part of a large crowd assembled in the town of Durham, *did throw a large bottle into a crowd of people*, and, in the course of and as a result of the tumultuous conduct of the crowd, at least one person suffered a physical injury, substantial property damage occurred, and arson fires were set.

(emphasis added).

As a result of the events that occurred after the police detained defendant Callahan on the eve of October 16, 2003, on March 3, 2004, defendant Callahan was also charged by a misdemeanor information with the following:

[The defendant][d]id purposely and unlawfully destroy, conceal, remove or otherwise impair the availability of a thing kept by the government for information or record, in that Christopher Callahan did destroy, remove[,] or conceal a prisoner transport and identification tag which was placed on his person by the Durham police department to provide it with necessary information for booking and arrest reports[.]

On February 19, 2004, Defendant Manley was indicted under the riot statute on very similar charges as defendant Callahan. The details of defendant Manley's indictment state that he ". . . did attempt to throw bottles into a crowd of people while the police were trying to disperse the crowd . . . ." Similar to defendant Callahan, on March 3, 2004, defendant Manley was also charged with the offense of destroying government documents by a misdemeanor information. The language of defendant Manley's charges mirrors that of defendant Callahan's March charges, except for the inclusion of defendant Manley's name in the charges.

Defendant Harris was also indicted on February 19, 2004 under the New Hampshire riot statute. Defendant Harris' indictment reads the same as defendant Callahan's indictment except defendant Harris' indictment states that he ". . . did throw a glass bottle, a deadly weapon as used . . . ." Defendant Harris has no other indictments or charges arising from this incident.

The State moves the court to consolidate the cases of the three defendants into one trial. The State contends that all three of the defendants conducted themselves in a similar manner during the same incident, and that the police arrested all three defendants within a fifteen minute time span and less than one hundred yards apart. The State maintains the proposed witnesses are the same in each defendant's case except for the individual arresting officers. The State also asserts that no confrontation problem arises in the present cases because none of the three

defendants made statements that will be admitted at trial. Thus, the State argues the court should consolidate the cases for trial for the purposes of judicial economy.

The defendants each make objections. However, because they raise identical arguments, the court will address them concurrently. The defendants assert they were acting independently of one another at the time of their October 16, 2003 arrests. The defendants claim they do not know each other and that the alleged conduct for which the police arrested them occurred in different times and at different places. The defendants argue that it would confuse a jury and unfairly prejudice the defendants' respective defenses to introduce evidence related to only one defendant at a trial that would involve three defendants. The defendants also maintain that irrelevant evidence will be introduced against them during trial if the court consolidates the three cases. Consolidation of the cases would allow the introduction of evidence specific to one defendant at a trial involving three defendants.

This consolidation motion involves multiple indictments against three different individuals. The majority of New Hampshire case law on consolidation addresses multiple indictments against the same individual. See State v. Ramos, 149 N.H. 118 (2003); State v. Hennessey, 142 N.H. 149 (1997); State v. Bergmann, 135 N.H. 97 (1991). While the existing case law does not deal with the same number of defendants as the specific case at hand, the court finds the following case law persuasive and applicable.

In State v. Ramos, the Court evaluated whether the lower court appropriately denied the defendant's motion to sever the charges. See 149 N.H. at 128. In its analysis, the Ramos Court considered whether, in light of the number of offenses charged and the complexity of the evidence offered, "the trier of fact w[ould] be able to distinguish the evidence and apply the law intelligently in each case." Id. Additionally, in State v. Hennessey, where the defendant

appealed the trial court's decision not to sever charges against the defendant, the Court found consolidation appropriate when the charges were "related or apparently part of a common scheme." Hennessey, 142 N.H. at 154. The Hennessey court also held, when deciding whether to consolidate a number of different charges, a court should consider "whether the evidence in support of each offense [is] brief, simple[,] ... unlikely to confuse a jury, and easily referable to each crime." Id. (citation omitted). Most importantly, the Court held it should consider if consolidation would jeopardize or infringe on the defendant's right to a fair trial. Id. The Court also assumed that a jury would follow its instructions, and that a properly instructed jury would not let its decision as to one defendant influence its decision as to the other defendants. See Id.

Although this case involves three different defendants, the charges against them are not numerous nor complex. As the State charged all three defendants under the same portion of the riot statute, a properly instructed jury could listen to the evidence presented at trial and could make its decision regarding the guilt or innocence of each defendant, separately and distinctly. As the relevant evidence and the proposed witnesses are substantially the same for each defendant, the defendants will encounter very little irrelevant evidence at their trial.

Further, the State enhanced the defendants' charges with part IV of the riot statute. See RSA 644:1, IV (2004). This portion of the statute requires the State to prove the defendant conducted himself in the proscribed manner indicated in part I of the statute, while at the same time he was part of a crowd that either injured an individual or damaged property. See RSA 644:1, I & IV (2004). Thus, in order to meet its burden under part IV of the statute, the State must offer the same evidence, evidence that the defendants allegedly participated in a crowd that injured a person or damaged property, against each defendant. Balancing the possibility that the defendants may encounter a small amount of irrelevant evidence at their consolidated trial

against the benefits of judicial economy and the court's capacity to assume the jury properly follows its specific instructions, this court finds that consolidating these three cases into one trial will not jeopardize each defendant's right to a fair trial.

Accordingly, the State's motion to consolidate is **GRANTED**.

**So Ordered.**

SEPTEMBER 17, 2004

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Bruce E. Mohl  
Presiding Justice